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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

**IN RE GOOGLE PLAY STORE
ANTITRUST LITIGATION**

THIS DOCUMENT RELATES TO:

Epic Games Inc. v. Google LLC et al.,
Case No. 3:20-cv-05671-JD

Case No. 3:21-md-02981-JD

**GOOGLE'S ADMINISTRATIVE
MOTION TO FILE UNDER SEAL
MATERIALS IN CONNECTION WITH
EPIC'S PROFFER RESPONSE
REGARDING EPIC'S PROPOSED
INJUNCTION**

Judge: Hon. James Donato

INTRODUCTION

Pursuant to Civil Local Rules 7-11 and 79-5, and Paragraphs 25-30 of this Court’s Standing Order for Civil Cases, Google Defendants (“Google”) respectfully move the Court to seal portions of supporting documents to Epic’s Proffer Response Regarding Epic’s Proposed Injunction (MDL Dkt No. 985). This Administrative Motion to File Under Seal is supported by the Declaration of Christian Cramer (“Cramer Decl.”) and the Proposed Order submitted herewith and is submitted pursuant to Civil Local Rule 79-5(c).

LEGAL STANDARD

The Ninth Circuit holds that sealing is appropriate where the “party seeking to seal a judicial record” demonstrates “compelling reasons” that outweigh the “general history of access and the public policies favoring disclosure.” *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006); *see also Fed. Trade Comm’n v. Qualcomm Inc.*, No. 17-CV-00220-LHK, 2019 WL 95922, at *3 (N.D. Cal. Jan. 3, 2019). Compelling reasons may exist where the material to be disclosed includes “business information that might harm a litigant’s competitive standing.” *Ctr. For Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598-99 (1978)). Moreover, public release of “detailed financial information” can implicate a “significant interest” of a party because it could lead to competitive harm. *Apple Inc. v. Samsung Elecs. Co., Ltd.*, 727 F.3d 1214, 1225 (Fed. Cir. 2013). Compelling reasons may also exist where the information to be disclosed reflects discussions of business strategy. *Krieger v. Atheros Commc’ns, Inc.*, No. 11-CV-00640-LHK, 2011 WL 2550831, at *1 (N.D. Cal. June 25, 2011). As the Ninth Circuit has stated, “[s]ecrecy is a one-way street: Once information is published, it cannot be made secret again.” *In re Copley Press, Inc.*, 518 F.3d 1022, 1025 (9th Cir. 2008).

ARGUMENT

Recognizing that there is a presumption in favor of access to court papers, Google focuses this narrow sealing request on the same categories of information it sought to seal in Google’s Proffer Response Regarding Epic’s Proposed Injunction, MDL Dkt. 982: (1) highly

1 confidential, sensitive compensation data for the employee roles that would be involved in the
 2 implementation of Epic’s proposed remedies, and (2) highly confidential, non-public costs of
 3 Google Play’s app review efforts, including granular cost and organizational structure detail.
 4 Google additionally seeks to protect a brief discussion of current, confidential internal strategy
 5 related to Android vetting processes, which is non-public and unrelated to any technical remedies
 6 proposed by Epic, and the personal address information of a Google employee, which is private,
 7 personally identifiable information and not relevant to this litigation.

8 The first category of information Google seeks to seal reflects highly confidential and
 9 sensitive compensation data for specific positions within Google. If publicly disclosed,
 10 competitors could use that highly confidential information to gain a competitive advantage over
 11 Google in hiring. For example, third-parties that compete with Google for talent would gain
 12 insights into confidential and sensitive aspects of Google’s compensation data, allowing these
 13 third-parties to potentially gain an unfair advantage in competing against Google for labor.
 14 Courts have found this type of information to meet the “compelling reasons” standard. *See In re*
 15 *High-Tech Antitrust Empl. Litig.*, No. 11–CV–02509–LHK, 2013 WL 163779, at *9 (N.D. Cal.
 16 Jan. 15, 2013) (granting request to maintain confidentiality of compensation data “given the
 17 potential harm that may come from public disclosure”); *Southcentral Found. v. Alaska Native*
 18 *Tribal Health Consortium*, Case No. 3:17-cv-00018-TMB, 2018 WL 11352150, at *7 (D. Ala.
 19 Sept. 17, 2018) (in concluding that materials should remain under seal, agreed that “non-
 20 executive employee compensation is not public” and that competitors could use compensation
 21 policies to “undercut [defendant’s] compensation terms”).

22 Second, with respect to app review cost estimates, Google’s competitors could
 23 improperly utilize this highly confidential cost estimate information to compete unfairly against
 24 Google more generally, including, for example, to benchmark against Google’s operational costs
 25 and attempt to mirror and/or beat those costs. *See Apple*, 727 F.3d at 1225 (Fed. Cir. 2013)
 26 (there are “compelling reasons” to seal whether disclosure would lead to a “competitive
 27 disadvantage” compared to the party’s “current position”); *Sun Microsystems Inc. v. Network*
 28

1 *Appliance*, No. C–08–01641–EDL, 2009 WL 5125817, at *9 (N.D. Cal Dec. 21, 2009) (sealing
 2 confidential business information, which if disclosed could cause harm to the parties).
 3 Specifically, competing app stores and platforms could compare Google’s non-public and highly
 4 confidential app review cost and resource data to their own to gauge their company’s operational
 5 efficiency and labor needs, and adjust their strategies based on that information to more
 6 effectively compete against Google. In particular, Google’s confidential costs for reviewing
 7 apps on Google Play, both in total and broken down by team type and description, reflect
 8 strategic and business priorities for the organization. Google’s competitors would obtain an
 9 unfair advantage if given detailed financial insight into Google’s allocation and depth of
 10 investments that enhance its platform, brand, and reputation to app developers and users, which
 11 further reflect Google’s operational and strategic priorities. Again, courts have routinely found
 12 this type of information to meet the “compelling reasons” standard and warrant sealing. *See*
 13 *IntegrityMessageBoards.com v. Facebook, Inc.*, Case No. 18-cv-05286-PJH, 2020 WL 6544411,
 14 at *12 (N.D. Cal. Nov. 6, 2020) (agreeing to seal “subject numbers” that “provide some glimpse
 15 into defendant’s mental impressions about how to dedicate its organizational efforts”); *Apple*,
 16 727 F.3d at 1226 (finding the parties had a “significant” interest in preventing the release of their
 17 detailed financial information, including cost data).

18 Third, public disclosure of information reflecting current, confidential internal strategy
 19 discussions within Google related to its Android security and safety efforts would likely lead to
 20 significant competitive harm to Google. In particular, this sensitive strategic information could
 21 be unfairly used competing app stores and platforms, for example, by enabling those competitors
 22 to adjust their own efforts in an attempt to better compete with Google. Competing platforms
 23 could mimic Google’s plans, or attempt to beat Google to market in implementing similar plans,
 24 in an attempt to enhance their own brand and reputation on trust and safety, potentially to the
 25 detriment of Google. Courts have found this type of strategic business information, including
 26 regarding future product changes, to meet the “compelling reasons” standard. *See Exeltis USA*
 27 *Inc. v. First Databank, Inc.*, No. 17-CV-04810-HSG, 2020 WL 2838812, at *1 (N.D. Cal. June
 28

1, 2020) (noting that courts have found “confidential business information” in the form of “business strategies” sealable under the compelling reasons standard.); *VLSI Tech. LLC v. Intel Corp.*, Case No. 17-cv-05671-BLF, 2023 WL 9187550, at *2 (N.D. Cal. Dec. 14, 2023) (finding compelling reasons to seal portions of document related to future product development and business dealings).

Lastly, Google focuses its last, narrowly tailored request on the personal address of a Google employee. This is private, personally identifiable information that bears no relevance on the issues in this litigation or Epic’s proposed remedies and must be protected by the Court. *See* 7 Fed. R. Civ. P. 5.2; *Snapkeys, Ltd. v. Google LLC*, No. 19-CV-02658-LHK, 2021 WL 1951250, at *3 (N.D. Cal. May 14, 2021); *Sameer v. Khera*, No. 117CV01748DADEPG, 2018 WL 4772035, at *1 (E.D. Cal. Oct. 1, 2018).

For the reasons explained above, Google respectfully requests that the Court grant this Motion and enter the Proposed Order submitted herewith.

Dated: July 31, 2024

Respectfully submitted,

By: /s/ Leigha M. Beckman
Leigha M. Beckman

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E-FILING ATTESTATION

I, Leigha M. Beckman, am the ECF User whose ID and password are being used to file this document. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that each of the signatories identified above has concurred in this filing.

/s/ Leigha M. Beckman
Leigha M. Beckman